

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

WALTER HOWARD,)
Petitioner,)
)
v.) C.A. No. 04-12641-DPW
)
ROBERT MURPHY,)
Respondent.)

PROCEDURAL ORDER

For the reasons stated below, petitioner is directed to either pay the \$5 filing fee for this action or submit an application to proceed without prepayment of fees within forty-two (42) days of the date of this Procedural Order.

DISCUSSION

On December 9, 2004, petitioner Walter Howard, a resident of the Massachusetts Treatment Center, filed his self-prepared (1) Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254; and (2) Motion for Tolling of Time Limits and for Court Order Exempting Petitioner from Limits. Petitioner did not submit the \$5 filing fee nor did he submit an application for waiver of the filing fee.

A party filing a Section 2254 habeas corpus petition must either (1) pay the \$5 filing fee for habeas corpus actions or (2) file an application to proceed without prepayment of fees. See 28 U.S.C. § 1914(a) (fees); § 1915 (proceedings in forma pauperis). An application for waiver of the filing fee must be accompanied by a

document certifying the amount of funds on deposit to the petitioner's credit at his institution of incarceration. Rule 3(a) of the Rules Governing Section 2254 Cases (if petitioner desires to prosecute petition in forma pauperis, he shall file the affidavit required by § 1915 and a certified statement of amount of funds in prisoner's institutional account); see 28 U.S.C. § 1915(a)(2). For the convenience of litigants, this Court provides a standardized form for fee waiver applications. Because petitioner has not submitted a filing fee or an application to waive the filing fee, he shall be granted additional time to do so.

CONCLUSION

If petitioner wishes to proceed with this action, he shall, within forty-two (42) days of the date of this Procedural Order, submit the \$5 filing fee or an application to waive prepayment of the filing fee with a certified account statement for the 6-month period immediately preceding the filing of this petition or this action will be dismissed without prejudice for failure to pay the filing fee.

The Clerk is directed to send petitioner a copy of an Application to Proceed Without Prepayment of Fees and Affidavit.
SO ORDERED.

Dated at Boston, Massachusetts, this 20th day of December, 2004.

/s/ Douglas P. Woodlock

DOUGLAS P. WOODLOCK
UNITED STATES DISTRICT JUDGE